IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

MFA.No. 598 of 2000(D)

I.C.NO.38/1995 OF EMPLOYEES' INSURANCE COURT, KOLLAM.
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APPELLANT/ 1ST OPPOSITE PARTY:

THE REGIONAL DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION,
THRISSUR.

BY ADV. SRI.T.P.M.IBRAHIM KHAN.

RESPONDENTS/APPLICANT & 2ND OPPOSITE PARTY:
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1. **M/S. NEO AGENCY, CHALAI, THIRUVANANTHAPURAM, REPRESENTED BY ITS PROPRIETOR ANWAR U CHEENA.**

2. **NEO FASHIONS, CHALAI, THIRUVANANTHAPURAM-36.**

BY ADV. SRI.U.K.RAMAKRISHNAN FOR R1 & R2.
SRI.P.V.LOHITHAKSHAN.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 598 of 2000

JUDGMENT

Koshy, J.

The Employees' State Insurance Corporation is challenging the order of the E.I. Court in setting aside its demand for contribution by clubbing of Neo Agency with Neo Fashions, Chalai. When notice was issued for covering the institutions under the E.S.I. Act, contending that both establishments are one and the same and both of them together employ more than the number of employees required for coverage, they approached the E.I. Court contending that these two establishments are different. According to them, Neo Agency was functioning in a big hall in the beginning. It was a propriety concern. Neo Fashions was started on 2.8.1991 by a partner in the same premises. Proprietor of Neo Agency was not a partner in that firm. The partnership was thereafter dissolved. One of the

brothers of the Proprietors of New Agency purchased Neo Fashions on 1.4.1992 and he was running the same. The two establishments were separately run. Separate Registers, Accounts, Sales Tax Registration and Income Tax Assessment and Muster Rolls are maintained for the two establishments. The contention of the Corporation is that they were sharing one telephone and one electric connection. Even though there was only one electric connection, at the time of inspection, it can be seen from the accounts that both were sharing the electricity bills. It is the contention of the claimants that both were having separate telephones. The respondent produced ten series of exhibits and also adduced oral evidence to the effect that both the establishments are separate and independent and one is not depending on the other. The ownership is different. Merely because two establishments are proximately situated, one cannot club the above establishments and treat it as one. Various notices

issued and the replies were produced by the E.S.I. Corporation. After considering the entire aspects, documentary and oral evidence, the E.I. Court found that both the establishments are different. There is no functional integrality or ownership control and both are separate and it cannot be clubbed together. We are of the view that the impugned order is passed on appreciation of facts based on evidence and no substantial question of law arises.

The appeal is, therefore, dismissed.

(J.B.Koshy, Judge)

27th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 598 of 2000

JUDGMENT

27th June, 2007